

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Rosemary A. Gilroy

v.

Civil No. 07-cv-00300-JL

Jmaes Kasper, Ponemah Trust,
Alan Segal, and Kent McHugh

O R D E R

Before the court is the defendants' Rule 12(b)(6) motion to dismiss the plaintiff's complaint for failing to state a claim. During the litigation of this dispositive motion, both parties have submitted voluminous materials not referenced in their pleadings. As courts must typically decide a motion to dismiss exclusively upon the allegations set forth in the complaint (and any documents attached to that complaint), see Parker v. Hurley, 514 F.3d 87, 90 n.1 (1st Cir. 2008), the court **DENIES** the defendants' motion to dismiss without prejudice.

Nothing in this order precludes the defendants from making a summary judgment challenge to the validity of the plaintiff's claims. If the defendants desire that the court treat their motion to dismiss as a Rule 56 motion for summary judgment under 12(d), they need only file a Notice of Reinstatement making that request. See Fed. R. Civ P. 12(d); see also Giragosian v. Ryan, 547 F.3d 59, 65 (1st Cir. 2008). The court will then provide the

plaintiff "a reasonable opportunity to present all the material that is pertinent to the motion," see Fed. R. Civ. P. 12(d); see also Clorox Co. P.R. v. Proctor & Gamble Commercial Co., 228 F.3d 24, 31 (1st Cir. 2000), before considering any such materials and making a ruling under the summary judgment standard.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: March 25, 2009

cc: Rosemary A. Gilroy, pro se
Steven F. Hyde, Esq.
Kurt R. McHugh, Esq.
Alan H. Segal, Esq.